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19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 SAN FRANCISCO/OAKLAND DIVISION

22 STACY SCHUETT,

23 Plaintiff,

24 v.

25 FEDEX CORPORATION, FEDEX
26 CORPORATION EMPLOYEES'
27 PENSION PLAN, and FEDEX
28 CORPORATION RETIREMENT
APPEALS COMMITTEE,

Defendants.

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Case No. 15-cv-189

COMPLAINT (ERISA)

INTRODUCTION

1. This case arises out of Defendants' refusal to pay a mandatory survivor benefit to the surviving spouse of a pension plan participant. Plaintiff Stacy Schuett ("Plaintiff" or "Ms. Schuett") was legally married to Lesly Taboada-Hall ("Ms. Taboada-Hall"), who passed away from cancer on June 20, 2013. At the time of her death, Ms. Taboada-Hall had been an employee

1 **INTRADISTRICT ASSIGNMENT**

2 5. Pursuant to Local Civil Rule 3-2(d), this action should be assigned to the San
3 Francisco/Oakland Division, because Sonoma County is where the FedEx Corporation
4 Employees' Pension Plan is administered in part, where some of the events or omissions giving
5 rise to Ms. Schuett's claims occurred, and where Ms. Schuett resides.

6 **THE PARTIES**

7 6. At all relevant times, Ms. Schuett has been a beneficiary, as defined by ERISA §
8 3(8), 29 U.S.C. § 1002(8), of the Plan. At all relevant times, Ms. Taboada-Hall, Ms. Schuett's late
9 spouse, was a participant, as defined by ERISA § 3(7), 29 U.S.C. § 1002(7), in the Plan. Ms.
10 Schuett resides in Sebastopol, California.

11 7. At all relevant times, Defendant FedEx Corporation Employees' Pension Plan
12 ("the Plan") has been an employee pension benefit plan within the meaning of ERISA § 3(2)(A),
13 29 U.S.C. § 1002(2)(A).

14 8. At all relevant times, the Plan offered, *inter alia*, pension benefits to FedEx
15 Corporation Employees, including Ms. Taboada-Hall.

16 9. At all relevant times, Defendant FedEx Corporation ("FedEx" or "the Company")
17 has been a fiduciary of the Plan. It is a named administrator of the Plan within the meaning of
18 ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A), and the Plan sponsor within the meaning of ERISA
19 § 3(16)(B), 29 U.S.C. § 1002(16)(B).

20 10. At all relevant times, Defendant FedEx Corporation Retirement Appeals
21 Committee ("Committee") has been a fiduciary of the Plan. It is a named administrator of the
22 Plan within the meaning of ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A), as Section 7.02 of the
23 Plan states that a committee has the authority to, among other things, "[c]onstrue any ambiguity
24 in and interpret any provision of the Plan, including Plan provisions governing eligibility to
25 participate and receive Plan benefits, and supply any omission or reconcile any inconsistency
26 therein in such manner as it deems appropriate in accordance with the purpose and intent of the
27 Plan." Plan § 7.02(a). The Committee denied Ms. Schuett's appeal of the denial of her claim for
28 a surviving spouse's pension benefits under the Plan.

1 **FACTS**

2 **The Plan**

3 11. The Plan, attached as Exhibit A, is a “defined benefit plan” established and
4 qualified under Section 401 of the Internal Revenue Code, 26 U.S.C. § 401. As a defined benefit
5 plan, the Plan is subject to certain requirements under ERISA and the Internal Revenue Code.

6 12. The Plan has two benefit accrual formulas: a Traditional Pension Benefit formula,
7 and a Portable Pension Account formula.

8 13. The Traditional Pension Benefit formula promises the participant a specified
9 monthly benefit at retirement based on the participant’s age, salary, and years of service. The
10 Traditional Pension Benefit formula is only available to participants who were hired by FedEx
11 prior to June 1, 2003. Benefits accrued under the Traditional Pension Benefit formula were
12 capped as of May 31, 2008.

13 14. After June 1, 2008, participants accrued benefits under the Portable Pension
14 Account Benefit formula, in which the participant earns compensation credits (based on
15 compensation and the participant’s combined age and years of service) and interest credits during
16 each year of employment. The Portable Pension Account Benefit is a “cash balance” formula,
17 meaning it defines the promised benefit in terms of a stated account balance, which is the sum of
18 all compensation credits and interest credits.

19 15. Participants cannot accrue benefits under both formulas at the same time for a
20 particular year of service at FedEx. Rather, longtime employees such as Ms. Taboada-Hall
21 initially accrued benefits under the Traditional Pension Benefit formula, and then began accruing
22 benefits under the Portable Pension Account formula when the Plan changed. As a result, when
23 she passed away, Ms. Taboada-Hall had earned Plan benefits under both formulas.

24 16. Only Ms. Taboada-Hall’s Traditional Pension Benefit – not her Portable Pension
25 Account Benefit – is at issue in this lawsuit.

26 17. Ms. Taboada-Hall also participated in the FedEx Corporation Retirement Savings
27 Plan, a separate employee 401(k) plan. That plan is a defined contribution plan, meaning a
28 separate account is maintained for each individual participant and the participant’s benefits are

1 “based solely upon the amount contributed to the participant’s account and any income, expenses,
2 gains and losses . . . which may be allocated to such participant’s account.” ERISA § 3(34), 29
3 U.S.C. § 1002(34). Ms. Taboada-Hall’s benefit under the 401(k) Plan is not at issue in this
4 lawsuit.

5 **The Plan’s Qualified Preretirement Survivor Annuity Benefit and Definition of “Spouse”**

6 18. As a defined benefit plan, the Plan is required by ERISA to provide a qualified
7 preretirement survivor annuity to all married participants who are vested and die before the
8 annuity starting date, unless the participant has waived the benefit and the spouse consented to the
9 waiver. 29 U.S.C. § 1055(a)(2).

10 19. Section 5.02 of the Plan requires that, for the Traditional Pension Benefit, a
11 “Qualified Joint and Survivor Annuity” must be paid to the surviving spouse of a fully vested
12 Plan participant who dies before retiring. This benefit is a “qualified preretirement survivor
13 annuity” within the meaning of 29 U.S.C. § 1055(a)(2), and is referred to throughout this
14 Complaint as such.

15 20. When an unmarried participant dies before retiring, the Plan does not provide any
16 survivor benefits under the Traditional Pension Benefit formula.

17 21. Section 1.66 of the Plan defines “Spouse” to “have the same meaning as set forth
18 in 1 U.S.C.A. § 7 (a person of the opposite sex who is a husband or wife), and shall be deemed to
19 refer solely to the persons who have entered into a marriage, as defined in 1 U.S.C.A. § 7 (a legal
20 union between one man and one woman as husband and wife).”

21 **Facts about Plaintiff and Her Late Wife**

22 22. Ms. Schuett and Ms. Taboada-Hall became a couple in 1983. At all relevant times,
23 they lived together in Sebastopol, California.

24 23. On April 27, 1987, Ms. Taboada-Hall began working for Defendant FedEx as a
25 delivery driver.

26 24. Like all couples, Ms. Schuett and Ms. Taboada-Hall planned for their life together.
27 They have two children, who were born in 1996 and 1999. The couple decided many years ago
28 that Ms. Taboada-Hall would work for FedEx full time, and that Ms. Schuett, an artist who

1 illustrates children’s books, would stay home to care for the children. The couple planned for
2 their financial security and future by relying on Ms. Taboada-Hall’s employment, including her
3 retirement benefits under the Plan.

4 25. Ms. Schuett and Ms. Taboada-Hall entered into a California Registered Domestic
5 Partnership in July 2003. At all times relevant to this case, as Registered Domestic Partners, they
6 had all the same rights and responsibilities as married spouses under California law. *See* Cal.
7 Fam. Code § 297.5(a) (“Registered domestic partners shall have the same rights, protections, and
8 benefits . . . as are granted to and imposed upon spouses.”); *id.* § 297.5(j) (providing that “gender-
9 specific terms referring to spouses shall be construed to include domestic partners”).

10 26. When same-sex marriage briefly became legal in California for several months in
11 2008, Ms. Schuett and Ms. Taboada-Hall wanted to plan and prepare for a wedding in front of
12 their family and friends. They were surprised and saddened that the passage of Proposition 8 in
13 November 2008 took away their right to marry before they could plan their marriage ceremony.
14 They decided that they would eventually marry after the discriminatory law was repealed or
15 struck down.

16 27. In February 2010, before marriage equality was restored in California, Ms.
17 Taboada-Hall was diagnosed with cancer that had already metastasized to her lungs. When the
18 couple received news of Ms. Taboada-Hall’s diagnosis, they vowed to fight it. They were hopeful
19 and did not think about or dwell on the possibility that Ms. Taboada-Hall might not survive. Ms.
20 Taboada-Hall continued to work for FedEx.

21 28. By November 2012, Ms. Taboada-Hall’s cancer had spread to her brain. Shortly
22 afterward, Ms. Taboada-Hall had to take a medical leave of absence because she could no longer
23 safely operate a vehicle. Although she was on a medical leave, she remained employed by FedEx.

24 29. In or around February 2013, Ms. Taboada-Hall spoke with Henry Saurer, a
25 representative of FedEx’s Human Resources Department, about her medical leave and employee
26 benefits. Although Ms. Taboada-Hall was eligible for early retirement under the Plan, Mr. Saurer
27 told her not to retire from FedEx, as that would result in her having to spend more money for her
28 medical benefits. In addition, Ms. Taboada-Hall still hoped that she would recover and be able to

1 return to work. Ms. Taboada-Hall asked about her other benefits from FedEx, including her life
2 insurance and 401(k) plan, and was told to make sure to list Ms. Schuett as her sole beneficiary
3 for these plans. Ms. Taboada-Hall also asked whether her “defined benefit” under the Plan could
4 “pass to her partner” if she passed away, but Mr. Saurer did not know, and told her to “ask
5 someone else.”

6 30. On June 3, 2013, Ms. Taboada-Hall’s doctor told the couple that Ms. Taboada-
7 Hall’s cancer was terminal and that there was nothing more to be done. After receiving this news,
8 the family started preparing for Ms. Taboada-Hall’s death. As part of this process, Ms. Taboada-
9 Hall and Ms. Schuett again reviewed Ms. Taboada-Hall’s benefits from FedEx.

10 31. Ms. Taboada-Hall and Ms. Schuett believed that Ms. Schuett and their children
11 would be provided for, in part, by Ms. Taboada-Hall’s benefits from FedEx. Ms. Taboada-Hall
12 named Ms. Schuett as her beneficiary for all of her benefits from FedEx. FedEx also provided
13 medical, dental, and vision benefits for Registered Domestic Partners in California, and Ms.
14 Schuett received such benefits.

15 32. In preparing for Ms. Taboada-Hall’s imminent death, Ms. Taboada-Hall and Ms.
16 Schuett reviewed what pension benefits they would have under the Plan.

17 33. On June 7, 2013, Ms. Taboada-Hall and Ms. Schuett learned for the first time that
18 it did not appear that the Plan would provide a survivor benefits under the Traditional Pension
19 Benefit formula for Registered Domestic Partners, although Registered Domestic Partners are
20 treated identically to married spouses for all purposes under California law. They were surprised
21 to see that the Plan defined “Spouse” as incorporating Section 3 of the Defense of Marriage Act
22 (“DOMA”), 1 U.S.C.A. § 7, and being limited to opposite-sex spouses.

23 34. Ms. Taboada-Hall and Ms. Schuett then called FedEx to determine whether Ms.
24 Schuett would receive a spousal survivor benefit when Ms. Taboada-Hall passed away. Between
25 approximately June 7, 2013 and June 13, 2013, they had several phone conversations with various
26 FedEx human resources personnel, none of whom knew the answer. On or about June 13, 2013,
27 the couple was finally told by a FedEx representative that Ms. Schuett would not get the benefit.

28 //

1 **The Couple’s Marriage and the Windsor Decision**

2 35. Given the imminence of Ms. Taboada-Hall’s death, the couple wanted to celebrate
3 their relationship to the extent possible. The couple also hoped that the U.S. Supreme Court
4 would determine that Section 3 of DOMA was unconstitutional, and they wished to marry
5 immediately to ensure the maximum legal protections for their relationship. Ms. Taboada-Hall
6 was too ill to travel to another state to be married.

7 36. On June 19, 2013, Ms. Schuett and Ms. Taboada-Hall had a wedding ceremony in
8 their home, officiated by a Sonoma County Supervisor. More than fifty family members and
9 friends crowded around Ms. Taboada-Hall’s bed as the couple exchanged vows and rings. Ms.
10 Taboada-Hall passed away the following day.

11 37. On June 26, 2013, the United States Supreme Court decided *United States v.*
12 *Windsor*, 131 S. Ct. 2675 (2013), which struck down as unconstitutional Section 3 of DOMA.
13 The same day, the Supreme Court decided *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013), which
14 cleared the way for same-sex marriages to resume in California.

15 38. On September 18, 2013, Ms. Schuett obtained an order from the Sonoma County
16 Superior Court stating that the couple’s marriage was legally valid, and the court issued a
17 marriage certificate listing the date of the marriage as June 19, 2013. Thus, Ms. Schuett and Ms.
18 Taboada-Hall were legally married under California law at the time of Ms. Taboada-Hall’s death
19 on June 20, 2013.

20 39. Following *United States v. Windsor*, consistent with guidance from the Internal
21 Revenue Service, the Department of Labor issued Technical Release No. 2013-04, which
22 provides that where the Secretary of Labor has authority to issue regulations, rulings, opinions
23 and exemptions in Title I of ERISA, the term “spouse” will be “read to refer to any individuals
24 who are lawfully married under any state law,” including same-sex couples. This guidance
25 confirms that in light of *Windsor*, same-sex spouses are entitled to the protection of ERISA’s
26 mandatory benefits provisions.

27 **Ms. Schuett’s Claim for Benefits**

28 40. By letter dated November 26, 2013, Ms. Schuett submitted a claim for benefits

1 under the Plan, including, *inter alia*, a qualified preretirement survivor annuity under Section
2 5.02.

3 41. By letter dated February 27, 2014, Defendant FedEx stated that it had directed
4 Claims Management to review Ms. Schuett’s claim, and notified Ms. Schuett that it needed a 90-
5 day extension to review her claim “[d]ue to the need for additional research.”

6 42. By letter dated April 30, 2014, Defendant FedEx denied Ms. Schuett’s claim for a
7 qualified preretirement survivor annuity, asserting that the Plan “provides a pre-retirement death
8 benefit only to a ‘Spouse’ as defined under the Plan” and that “[o]n the date of Ms. Taboada-
9 Hall’s death, the Plan defined Spouse by reference to the Defense of Marriage Act (“DOMA”),
10 which excluded Ms. Schuett.”

11 43. By letter dated June 27, 2014, Ms. Schuett appealed Defendant FedEx’s denial of
12 her claim, contending, *inter alia*, that FedEx is only permitted to follow the terms of the Plan
13 document to the extent they are consistent with the law, and that the law is clear that all spouses,
14 including same-sex spouses, are protected by ERISA’s mandatory benefits provisions. Ms.
15 Schuett further contended that Defendants are now required to apply the current law, not the prior
16 unconstitutional law, in determining her eligibility for benefits.

17 44. On or about July 16, 2014, Ms. Schuett filed a charge of sex discrimination with
18 the U.S. Equal Employment Opportunity Commission (EEOC), which has been cross-filed with
19 the California Department of Fair Employment and Housing, alleging that FedEx Corporation’s
20 denial of her claim for a spousal survivor benefit constitutes sex discrimination in violation of
21 Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq., and applicable state law. The
22 charge is currently under investigation by the EEOC.

23 45. By letter dated August 25, 2014, Defendant FedEx Retirement Appeals Committee
24 denied Ms. Schuett’s appeal, stating, *inter alia*, that “for purposes of the Plan the Committee
25 determined that Ms. Taboada-Hall was unmarried at the time of her death, and had no surviving
26 Spouse.”

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28 //

1 **FIRST CLAIM FOR RELIEF**

2 **[Claim for Benefits Pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), against All**
3 **Defendants]**

4 46. Plaintiff incorporates Paragraphs 1 through 45 as though fully set forth here.

5 47. Plaintiff has exhausted her administrative remedies.

6 48. ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), permits a plan participant to
7 bring a civil action to recover benefits due to her under the terms of a plan, to enforce her rights
8 under the terms of a plan, and/or to clarify her rights to future benefits under the terms of a plan.

9 49. ERISA requires the Plan, a defined benefit plan, to provide a qualified
10 preretirement survivor annuity to all married participants who are vested and die before the
11 annuity starting date, unless the participant has waived the benefit and the spouse consented to the
12 waiver. ERISA § 205(a)(2), 29 U.S.C. § 1055(a)(2).

13 50. As Ms. Taboada-Hall's surviving spouse, Ms. Schuett is entitled to a qualified
14 preretirement survivor annuity under Section 5.02 of the Plan.

15 51. To the extent the Plan defines "Spouse" by incorporating a now-unconstitutional
16 statute, using a definition inconsistent with ERISA and guidance from the Department of Labor
17 regarding the interpretation of ERISA's mandatory benefits rules, Defendants are not permitted to
18 follow the terms of the Plan, and must interpret the Plan without reference to Section 1.66.

19 52. In particular, Section 11.04 of the Plan provides that "[i]f any provision or term of
20 this Plan, or of the Trust Agreement entered into pursuant hereto, is deemed to be at variance
21 with, or contrary to, any law of the United States or applicable state law, the provision of the law
22 shall be deemed to govern." The definition of "Spouse" in Section 1.66 is in conflict with
23 ERISA's requirement that an annuity be paid to a surviving spouse, because a "spouse" as the
24 term is used in ERISA includes a same-sex spouse after *Windsor*. Defendants do not have the
25 discretion to interpret the Plan as excluding same-sex spouses from receipt of a qualified
26 preretirement survivor annuity because that interpretation is contrary to law.

27 53. By denying Ms. Schuett a qualified preretirement survivor annuity under the Plan,
28 and by related acts and omissions, including but not limited to refusing to apply the law in effect
at the time of Ms. Schuett's claim, Defendants have violated, and continue to violate, the terms of

1 the Plan, governing law regarding ERISA’s mandatory spousal benefits, and Ms. Schuett’s rights
2 under the Plan and the governing law.

3 **SECOND CLAIM FOR RELIEF**

4 **[Claim for Breach of Fiduciary Duty Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3),**
5 **against Defendant FedEx Corporation and Defendant Committee, for Failure to Administer**
6 **Plan in Accordance with Applicable Law]**

6 54. Plaintiff incorporates Paragraphs 1 through 53 as though fully set forth here.

7 55. ERISA § 404(a), 29 U.S.C. § 1004(a), requires that a fiduciary discharge its duties
8 with respect to a plan solely in the interest of the participants and beneficiaries, for the exclusive
9 purpose of providing benefits to participants and fiduciaries and defraying reasonable expenses of
10 administering the plan, and in accordance with the documents and instruments governing the plan
11 insofar as such documents and instruments are consistent with other provisions of ERISA.

12 56. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a beneficiary of a plan to
13 file suit to “enjoin any act or practice” that violates Title I of ERISA or the terms of a plan,
14 and/or to obtain “other appropriate relief” to redress such violations. ERISA § 205(a)(2), 29
15 U.S.C. § 1055(a)(2), is part of Title I of ERISA.

16 57. By engaging in the acts and omissions described above, including but not limited
17 to interpreting the Plan in a manner contrary to applicable federal law, refusing to apply the law
18 in effect at the time of Ms. Schuett’s claim, and refusing to provide Ms. Schuett a benefit
19 mandated by ERISA, Defendant FedEx and Defendant Committee have breached their fiduciary
20 duty to Ms. Schuett and have violated Title I of ERISA.

21 58. As a result of Defendant FedEx and Defendant Committee’s breaches of fiduciary
22 duty and violations of Title I of ERISA, Plaintiff has been harmed.

23 **THIRD CLAIM FOR RELIEF (IN THE ALTERNATIVE)**

24 **[Claim for Breach of Fiduciary Duty Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3),**
25 **against Defendant FedEx Corporation, for Failure to Inform and/or Misleading**
26 **Communications]**

26 59. Plaintiff incorporates Paragraphs 1 through 58 as though fully set forth here.

27 60. An ERISA fiduciary is obligated to disclose material information to participants
28 and beneficiaries, and has a duty not to mislead a plan participant and/or beneficiary.

1 61. Defendant FedEx breached its fiduciary duty to Ms. Schuett by failing to provide
2 an answer to her and Ms. Taboada-Hall in response to Ms. Taboada-Hall's telephone inquiry in
3 February 2013 as to whether Ms. Schuett would receive a survivor benefit under the Traditional
4 Pension Benefit.

5 62. Defendant FedEx also breached its fiduciary duty to Ms. Schuett by failing to
6 provide an answer in response to Ms. Taboada-Hall's and Ms. Schuett's multiple telephone
7 inquiries in June 2013 as to whether Ms. Schuett would receive a survivor benefit under the
8 Traditional Pension Benefit, and not providing an answer until approximately one week before
9 Ms. Taboada-Hall passed away.

10 63. In addition, while Ms. Schuett maintains that she is entitled to a spousal survivor
11 benefit because she and Ms. Taboada-Hall were legally married at the time of Ms. Taboada-
12 Hall's death, FedEx also breached its fiduciary duty to Ms. Schuett by failing to inform Ms.
13 Taboada-Hall and Ms. Schuett prior to Ms. Taboada-Hall's death that if Ms. Taboada-Hall retired
14 prior to passing away, she could have, pursuant to Section 4.03 of the Plan, elected a non-spousal
15 form of benefit under the Traditional Pension Benefit formula. Rather than pointing out this Plan
16 provision, in response to a direct question about whether she should retire, a FedEx representative
17 informed Ms. Taboada-Hall that she should not retire because it would adversely affect her
18 medical benefits. Had Ms. Taboada-Hall retired before she died, the couple could have received
19 an "Optional Joint and Survivor Annuity," with payments going to Ms. Schuett, who was Ms.
20 Taboada-Hall's designated beneficiary under the Plan, after Ms. Taboada-Hall's death.

21 64. The amount of the optional benefit would have been less than the spousal benefit
22 under Section 5.02 because it would have been reduced to reflect Ms. Taboada-Hall's early
23 retirement. It would have been greater than the zero benefit that Ms. Schuett currently receives
24 due to FedEx's erroneous determination.

25 65. In short, by not informing Ms. Taboada-Hall and Ms. Schuett prior to Ms.
26 Taboada-Hall's death that the only circumstance in which FedEx would deem Ms. Schuett
27 eligible to receive a survivor benefit under the Traditional Pension Benefit formula was if Ms.
28 Taboada-Hall retired before passing away, and by engaging in the acts and omissions described

1 above, Defendant FedEx breached its fiduciary duty to Ms. Schuett.

2 66. As a result of Defendant FedEx's breaches of fiduciary duty, Plaintiff has been
3 harmed.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays that the Court grant the following relief:

6 As to the First Claim for Relief:

7 A. Declare that Defendants have violated the terms of the Plan;

8 B. Order Defendants to pay a qualified preretirement survivor annuity to Plaintiff
9 beginning on June 20, 2013, with prejudgment interest;

10 C. Declare that Plaintiff has a right to receive a monthly preretirement survivor
11 annuity under Section 5.02 of the Plan;

12 D. Award Plaintiff reasonable attorneys' fees and costs of suit pursuant to ERISA §
13 502(g), 29 U.S.C. § 1132(g); and

14 E. Provide such other relief as the Court deems equitable and just.

15 As to the Second Claim for Relief:

16 A. Declare that Defendant FedEx and Defendant Committee breached their fiduciary
17 duty to Plaintiff;

18 B. Declare that by refusing to provide a mandated spousal benefit to Plaintiff,
19 Defendant FedEx and Defendant Committee have violated ERISA;

20 C. Declare that Plaintiff has a right to receive a monthly preretirement survivor
21 annuity under ERISA;

22 D. Enjoin Defendant FedEx and Defendant Committee from interpreting Section 1.66
23 of the Plan to exclude same-sex spouses married before *Windsor*;

24 E. Require Defendant FedEx to reform the Plan with respect to Ms. Schuett such that
25 Ms. Schuett is deemed eligible to receive a monthly preretirement survivor annuity beginning on
26 June 20, 2013;

27 F. Order that Defendant FedEx pay to Plaintiff amounts to make Plaintiff whole for
28 the harm she has suffered due to Defendant FedEx's breaches by providing other appropriate

1 equitable relief, including but not limited to surcharge, restitution, prejudgment interest, and
2 imposing a constructive trust and/or equitable lien on any funds wrongfully held by Defendant;

3 G. Award Plaintiff reasonable attorneys' fees and costs of suit pursuant to ERISA §
4 502(g), 29 U.S.C. § 1132(g); and

5 H. Provide such other relief as the Court deems equitable and just.

6 As to the Third Claim for Relief (in the Alternative):

7 A. Declare that Defendant FedEx has breached its fiduciary duty to Plaintiff;

8 B. Order that Defendant FedEx pay to Plaintiff amounts to make Plaintiff whole for
9 the harm she has suffered due to Defendant FedEx's breaches.

10 C. Order that Defendant FedEx pay to Plaintiff amounts to make Plaintiff whole for
11 the harm she has suffered due to Defendant FedEx's breaches by providing other appropriate
12 equitable relief, including but not limited to surcharge, restitution, prejudgment interest, and
13 imposing a constructive trust and/or equitable lien on any funds wrongfully held by Defendant;

14 D. Award Plaintiff reasonable attorneys' fees and costs of suit pursuant to ERISA §
15 502(g), 29 U.S.C. § 1132(g); and

16 E. Provide such other relief as the Court deems equitable and just.

17
18 Dated: January 14, 2015

Respectfully Submitted,

19
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